to A., who bought in at the original price, and A. having assigned to B. at an advance, the land was again put up to secure the title to the latter, and bid in by him at the advance. The original purchase money was applied in payment of the mortgage and judgment, and the question was whether, under the circumstances, the vendor or A. was entitled to the surplus. The suit was in equity, but it would seem that one of the grounds on which it was determined would hold here at law, the Court saying that the verbal agreement entered into between the vendor, purchaser and the Sheriff was no variation or change of the written contract for the sale of the lands, but only indicated the mode in which the title was to be secured to the purchaser, and was in effect to carry the contract into execution, not to add to or vary it. It was so regarded in Coates v. Sangston, 5 Md. 121, where it was laid down, that in case of a simple contract in writing oral evidence is admissible, *at law*, to show that, by a subsequent agreement, the term of performance was enlarged or the place of performance changed, and also that it is competent to prove an additional suppletory agreement by parol, by which something is supplied which is not in the contract, see Atwell v. Miller, 11 Md. 348. Reliance was placed on Watkins v. Hodges, 6 H. & J. 38, where the plaintiff sold the defendant, by a contract in writing not under seal, a lot of tobacco, to be inspected and delivered at a certain time and place, and it was held that the time of performance might be enlarged by parol. But this case was decided on the authority of Cuff v. Penn, 1 M. & S. 21, which is overruled by Stead v. Dawber *supra;* see also Emmet v. Dewherst, 3 Mac. & G. 587. As to an agreement under seal; in Morrison v. Galloway, 2 H. & G. 461, a party, by an agreement under seal, contracted to put up a house for another, the latter by parol waived temporarily the performance of the agreement, and this waiver was allowed to be given in evidence in mitigation of damages, see Watchman v. Crook, 5 G. & J. 239.[95]

Whether an agreement in writing not under seal may be discharged at law by parol has been a matter of some doubt.[96] In Goss v. Lord Nugent *supra*, the Court remarked, that the 4th section does not say in distinct terms that all contracts or agreements concerning the sale of lands shall be in writing; all it enacts is, that no action shall be brought unless they are in writing. And as there is no clause in the Act which requires the dissolution of such contracts to be in writing, it should rather seem, that a written contract concerning the sale of lands may still be waived and abandoned by a new agreement not in writing, and so as to prevent either party from recovering on the contract which was in writing, but it was not necessary to decide that point. In Harvey v. Grabham *supra*, this case was alluded to as one, in which it was doubted whether the parties might waive a written agreement by parol. And the high authority of Sugden, 1 V. & P. 250, is to the effect, that perhaps the better opinion is that parol evidence of waiver is inadmissible at law. However, the contrary is adjudged in Coates v. Sangston *supra*. And an entire abandon-

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[95] See Herzog v. Sawyer, 61 Md. 344; Zihlman v. Cumberland Co., 74 Md. 303; Oldewurtel v. Wiesenfeld, 97 Md. 173.

[96] See Gunby v. Sluter, 44 Md. 249.